

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DARYL PIERCE,

No. 16-cv-5107 (NLH)

Petitioner,

MEMORANDUM AND
ORDER

v.

UNITED STATES OF AMERICA,

Respondent.

IT APPEARING THAT:

1. On July 17, 2017, Respondent filed a Motion to Dismiss Petitioner's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255. ECF No. 12. Petitioner has not filed an opposition to the Motion to Dismiss.

2. On January 9, 2018, Petitioner filed a Motion for Summary Judgment requesting that the Court grant judgment in his favor because the Respondent failed to respond to his § 2255 Motion. ECF No. 14. Although styled as a motion pursuant to Federal Rule of Civil Procedure 56, the Court construes the motion as one seeking a default judgment pursuant to Rule 55. Because the Respondent did file a Motion to Dismiss the § 2255 Motion, the Court will dismiss without prejudice the Motion for Summary Judgment.

3. In addition, because it appears that the Petitioner may not have received the Respondent's Motion to Dismiss, the Court

will provide Petitioner with forty-five (45) days in which to file an opposition brief to the Motion to Dismiss.

IT IS therefore on this 23rd day of January, 2018,
ORDERED that Petitioner shall have forty-five (45) days from the entry of this order in which to file a brief in opposition to the Motion to Dismiss; and it is further ORDERED that the Respondent shall re-serve a copy of its Motion to Dismiss including exhibits, ECF No. 12, on Petitioner at his current address of record at FCI McDowell within seven (7) days from the entry of this Order; and it is finally ORDERED that the Clerk of the Court shall serve Plaintiff with copies of this Order via regular mail.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.